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10/620,207	07/15/2003	Harold L. Cohen	30449.0003	8732

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/620,207
Filing Date: July 15, 2003
Appellant(s): COHEN, HAROLD L.

John Del Vecchio
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 24, 2006 appealing from the Office action mailed July 27, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,042,194	COHEN	8/1991
5,438,792	MONETT et al.	8/1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, and 6-8 are anticipated under 35 USC 102(b) by Cohen (US 5042194).

Claims 1, 24, and 31 are anticipated under 35 USC 102(b) by Monett et al. (US 5438792).

Claims 4-5, 9, and 10 are unpatentable under 35 USC 103 (a) over Cohen (US 5042194).

Claims 25-26 and 32-35 are unpatentable under 35 USC 103(a) over Monett et al. (US 5438792).

(10) Response to Argument

Applicant argues that the examiner eliminated structure from Cohen to arrive at the claimed invention. However, Cohen shows three panels as discussed in the final Rejection. It should be pointed out that applicant has used to open-ended term "comprising" which means that the reference can have more structure than is recited in the claim. Applicant argues that Cohen is not an insert, but the diagonal or divider panels 12, 14 can clearly be considered an insert into the box formed by outer wall panels 16, 18, 20, 22. There is no requirement that prevents the insert to be a folded insert. Cohen shows a formula applied on a coated region of the first side which can be taken as the left side (element 12) of Fig. 1 and the second side is taken as the right side (element 14) of Fig. 1. Also note that in the resulting trap, a formula is been applied to the top and bottom of the divider element as shown in Fig. 3. Cohen further discloses an insecticide in column 3, line 66 to column 4, line 15. As to claim 6, Cohen

shows a Z configuration in Fig. 3 by following the top panel from the top left to the divider panel at the top right diagonally downwardly to the bottom left and straight across the bottom panel. In reference to claim 8, Cohen shows coated parts facing each other.

In regard to Monett, applicant argues that the reference does not disclose an insert 12. However, see Fig. 2 which shows an insert 12 that is mounted in a trap as shown in Figs. 5-6. Also, note column 3, lines 55-60. In reference to claim 24, applicant argues that Monett does not disclose the claimed formula applied on a coated region of the first side or a formula applied on a coated region of the second side. Applicant has not shown why the sheet 12 on Monett can not be considered as an insert when it is inserted into the trap as clearly shown in Figs. 5-6.

In regard to the obvious rejections under Cohen, one skilled in the art would have found it obvious to change the location that the coating is applied to the trap and the insert to suit trapping and destroying different insects which have different sizes and different habits. One would desire to locate the coating in regions of the trap that would have the highest chances of having an insect come into contact with the coating. Applicant has submitted no evidence to show that the claimed configurations of the coating produces an obvious result. Hence, in response to applicant's argument that there is no suggestion to modify the reference, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

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generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art. As to the folded tabs, Cohen shows a tab 42, but it would have been obvious to employ more than one tab for multiplied effect. See *In re Harza*, 124 USPQ 378. The location of the tabs would be determined by routine experimentation.

Applicant argues that Monett does not suggest a coated region of the first side of the insert and a coated region of the second side of the insert where the middle portion of each is coated. One skilled in the art would have found it obvious to coat both sides of the middle portion of the insert to bring a higher probability to having an insect come into contact with the formula. Applicant alleges that Monett would not work and states that the entire structure would collapse in on itself since there would be no structure to support the adhesive sheet because it is only a film. This is found lacking because applicant has submitted no proof or test results to prove the statement. Applicant argues that Monett does not disclose an insertion machine, but a user or assembler in Monett acts as an insertion machine since the insert ends up in the trap box. As to Monett being three layers thick, a claim that recites a single layer thick can be interpreted to be met by a reference having more than one layer since the reference does have a single layer going back to the use of the term "comprising."

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Kurt Rowan



KURT ROWAN
PRIMARY EXAMINER
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Conferees:

PP 

DA 